

REMARKS

1. Status of Claims

This communication is in response to the Office Action dated May 18, 2004. In this Office Action, the Examiner finally rejected claims 1, 5, 9, and 10 under 35 U.S.C. § 102 as being anticipated by U.S. Pat. No. 6,106,213 to Denker ("Denker"). The Examiner further rejected claims 2, 3, 6, 7, 8, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Denker, and claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Denker in view of U.S. Pat. No. 1,802,812 to Gratz ("Gratz"). For the reasons given below, Applicant respectfully submits that the references taken alone or in combination fail to disclose, teach, or even suggest the presently claimed invention, and requests that the final rejection of the claims be withdrawn and the claims passed to issue.

2. Impropriety of Final Rejection

As an initial matter, Applicant believes that the Final Rejection of May 18, 2004 is improper. As stated in the MPEP, section 706.07 (a),

[u]nder present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In this case, the Examiner introduced a new ground of rejection in the Office Action of May 18, 2004. In the first Office Action dated September 26, 2003, the Examiner labeled the "top surface" and the "angled guide surface" on the Denker reference as elements positioned on the outer surface of the receptacle structure 30, as seen in Exhibit A. Applicant relied upon this interpretation of Denker in formulating its response to the first Office Action. Then, in the Office Action dated May 18, 2004, the Examiner referred to

the "top surface" and the "angled guide surface" as different elements positioned on the inner surface of the receptacle structure 30, as seen in Exhibit B. This change represents a new rejection, not previously set forth and not necessitated by the Applicant's amendment. Therefore, the finality of the Office Action of May 18, 2004 is improper and Applicant respectfully requests that the finality be withdrawn.

3. Rejection of Claims under 35 U.S.C. §§ 102 and 103

In the Office Action, claims 1-3, 5-12, and 14 were rejected in view of Denker, either alone or in combination. For the reasons discussed below, the rejection of the pending claims is improper and should be withdrawn.

Denker fails to disclose the "receptacle structure coupled to the door," as required by the independent claims of the present invention. In Denker, the receptacle structure 30 is coupled to wall 17, and not to the door (or the door assembly). See Figures 6A-6C and col. 5, lines 51-53. Thus, Denker cannot anticipate claims 1, 5, 9, and 10, and those claims, as well as any claims dependent thereon, should be passed to issue.

Further, Denker fails to disclose a "receptacle formed between the top surface and the angled guiding surface." The alleged "top surface" of the receptacle cannot reasonably be interpreted as a top surface of the receptacle structure. As seen from Exhibit B, the newly defined "top surface" is not located on a top surface of the mechanism 30, but rather in its middle. Denker fails to disclose a receptacle formed between the actual top surface, as defined in Exhibit A, and the angled guide surface, as defined in Exhibit B. Thus, for this further reason, Denker cannot anticipate claims 1, 5, and 10 and those claims, as well as any claims dependent thereon, should be passed to issue.

Furthermore, in Denker, the latching rod does not contact an angled protrusion formed by the top surface of the receptacle structure. As mentioned above, the proposed "top surface" of Exhibit B cannot reasonably be interpreted as a top surface of the receptacle structure. The actual top surface, as defined in Exhibit A, does not include an angled protrusion for contact with the latching rod to push the receptacle structure and the door to a partially opened position. Thus, for this further reason, Denker cannot anticipate claims 1, 5, and 10 and those claims, as well as any claims dependent thereon, should be passed to issue.

Additionally, Denker fails to disclose the step of "moving the latching rod in an upward direction to contact an angled protrusion of a receptacle structure, thereby causing the rod to push the receptacle structure and the door to a partially open position," as required by claim 8. As seen from Figures 6A-6C, the latching rod is moved in a downward direction to place the door in an open position. Thus, for this reason, Denker does not disclose the method of claim 8 and this claim should be passed to issue.

Lastly, the Examiner rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Denker in view of Gratz. The proposed combination, however, is improper. Denker fails to disclose the sliding assembly being coupled to a foot pedal. Instead, Denker discloses a controller 84 coupled to the sliding assembly 25 "which provides upward and downward motion" to the door assembly. See Denker at col. 6, l. 1-2. It is unclear exactly what would motivate one of ordinary skill in the art to provide the foot pedal of Gratz to the door assembly of Denker, especially in view of the fact that Denker uses a controller for providing upward and downward motion to the drive mechanism 25. Thus for this reason, the combination is improper and Applicant

respectfully requests that the rejection be withdrawn.

4. Conclusion

In view of the foregoing, Applicant respectfully requests that all of the rejections of the pending claims 1-3, 5-12, and 14 be withdrawn. Applicant submits that the application is now in condition for allowance and respectfully request early notice to this effect. If any questions or issues remain, the Examiner is invited to contact the undersigned at her direct dial number (312) 935-2366.

Respectfully submitted,

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